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May 3, 2016

The Honorable Jeh Johnson
Secretary
Department of Homeland Security
Washington, DC 20528

Dear Secretary Johnson:

I am profoundly troubled by the revelation that your avowed immigration enforcement policies announced on November 20, 2014, are being countermanded by leadership within the Department of Homeland Security in separate, unwritten policies, which makes any semblance of immigration enforcement illusory.

During testimony before the House Judiciary Subcommittee on Immigration and Border Security on February 4, 2016, Border Patrol Agent Brandon Judd, President of the American Federation of Government Employees National Border Patrol Council, testified that the Department of Homeland Security (DHS) has instituted a policy whereby Border Patrol agents are required to release unlawfully present aliens apprehended at the border and instructed to not place such aliens in removal proceedings, if the aliens do not have a felony conviction and merely claim to have been in the United States since January 1, 2014. That revelation was stunning because such a policy contradicts your memorandum of November 20, 2014, "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants." Under that memorandum, all aliens apprehended at the border while attempting to unlawfully enter the United States are priorities for removal. Agent Judd, who represents more than 16,000 Border Patrol agents, further testified that this DHS policy was established because of the embarrassing fact that large numbers of aliens apprehended at the border fail to appear at their removal hearings and simply vanish.

In response to Agent Judd's testimony, U.S. Customs and Border Protection Commissioner Gil Kerlikowske told the House Appropriations Committee on March 1 that Border Patrol agents "should not be releasing anyone" and that the agency is not engaging in the "catch and release" policies of the past. According to Commissioner Kerlikowske, every alien apprehended by the Border Patrol over the age of fourteen is subjected to "all the formalities" of your enforcement policy memorandum. He disputed Agent Judd's testimony, stating that the National Border Patrol Council "is probably not the most knowledgeable organization about what's actually going on." Commissioner Kerlikowske then issued an ominous warning to agents who do not follow the directions of their superiors – "[Y]ou really do need to look for another job."

Commissioner Kerlikowske's thinly veiled threat to terminate Border Patrol agents who voice concerns about the policy of releasing recent unlawful entrants – aliens who this Administration has designated as enforcement priorities – is distressing. This follows similar comments from President Obama in 2015, who warned that there would be “consequences” for U.S. Immigration and Customs Enforcement officers who do not follow his non-enforcement policies. Unquestionably, this Administration has exhibited a troubling pattern of threats and intimidation toward the very agents and officers whose mission is to secure the border, stem the flow of unlawful immigration, and protect the homeland from terrorist and public safety threats. Their jobs are difficult and dangerous enough, without the threat of termination looming over their every action. The institutionalized intimidation of these agents and officers by this Administration produces a “chilling effect” on their ability to carry out their critical mission, causing them to lose focus of their law enforcement role and forcing them to submit to the improper pressures of political appointees. As a result, Border Patrol agents, who already deal with threats from violent drug cartels and criminal gangs along the border, can add another item to the list of threats they encounter – job termination – should they dare to do their jobs. Such callous sentiments by the Commissioner highlight the reasons why DHS employees report the lowest job satisfaction rating of any federal employer.

Agent Judd informed the Subcommittee on March 21, 2016, that DHS Deputy Secretary Mayorkas confirmed the DHS “catch and release” policy during a meeting on August 26, 2015, in which Agent Judd and other members of the National Border Patrol Council raised concerns about the policy. In response to those concerns, Deputy Secretary Mayorkas asked rhetorically, “Why would we NTA those we have no intention of deporting?” Incredibly, he also told Agent Judd that Border Patrol agents should not initiate removal proceedings against aliens unlawfully present because of the significant backlog of cases pending in the immigration courts. I am writing separately to Deputy Secretary Mayorkas to confirm whether he in fact made such statements, and if so, to explain the statements.

If he did in fact make these statements, Deputy Secretary Mayorkas' statements confirm Agent Judd's testimony before the Subcommittee that some aliens apprehended at the border are being released and are not even being placed in removal proceedings, despite Commissioner Kerlikowske's statements to the contrary. More importantly, his statements demonstrate that your written enforcement policies are misleading to the American public, since the so-called enforcement priorities are really not priorities at all. Deputy Secretary Mayorkas was not referring to the exercise of prosecutorial discretion, purportedly on a case-by-case basis, for certain unlawful entrants apprehended at the border. He was undoubtedly referencing all recent border entrants, since such aliens are classified as priorities for enforcement and all of them would be placed in removal proceedings before an immigration judge, irrespective of any backlog. That your Deputy Secretary would acknowledge such a deceptive policy, and then stand by silently as Border Patrol agents are criticized for sounding the alarm and threatened with termination for questioning this dishonest arrangement, is astounding.

“The men and women of the Department of Homeland Security are our greatest asset, and I and the other senior leaders of DHS are committed to improving employee satisfaction. We will continue our efforts to make DHS a place where all employees feel valued and where their hard work is recognized and rewarded.” These are your words from September 28, 2015, and I would hope that you embrace those sentiments today. Border Patrol agents are on the front line of the border security mission. They and others within DHS, whose mission is to secure the homeland from innumerable

threats, both at the border and in the interior of the country, play a vital role in protecting the safety of the American public. These vigilant protectors deserve no less than your full support.

Thank you for your prompt attention to these matters. Please direct any questions to Tracy Short, Counsel, Subcommittee on Immigration and Border Security, at (202) 225-3926.

Sincerely,

A handwritten signature in blue ink that reads "Bob Goodlatte". The signature is written in a cursive, flowing style.

Bob Goodlatte
Chairman

cc: Hon. John Conyers, Jr.
Hon. Alejandro Mayorkas
Hon. Gil Kerlikowske